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WASHINGTON, D.C. 20548

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B-164031(3)

RELEASED

OCTOBER 15, 1979

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The Honorable Claude Pepper  
Chairman, Select Committee  
on Aging  
House of Representatives

Dear Mr. Chairman:

Subject: Potential Effects of a Proposed Amendment  
to Medicaid's Nursing Home Reimbursement  
Requirements (HRD-80-1)

✓ By letter dated August 27, 1979, you asked for our views on a proposed amendment to section 1902(a)(13)(E) of the Social Security Act prescribing the method States must use under Medicaid to reimburse skilled nursing facilities (SNFs) and intermediate care facilities (ICFs), which are collectively referred to as nursing homes. Current law requires States to pay SNFs and ICFs on a reasonable-cost-related basis, using cost-finding methods approved and verified by the Department of Health, Education, and Welfare (HEW).

The proposed amendment would require each State to pay SNFs and ICFs based on methods and standards developed by the State. The State would have to assure that its methods and standards result in payments that (1) meet the costs incurred by efficiently and economically run facilities which provide care in conformity with Federal and State requirements and (2) assure reasonable availability of services to Medicaid recipients at least to the extent services are available to the general population.

BACKGROUND OF THE PROPOSED AMENDMENT

The proposed amendment first arose when the Senate Committee on Finance staff proposed changing the reimbursement provision as a possible way to reduce Medicaid costs.

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A Committee print 1/ outlined a number of cost containment proposals including one which said: "Delete statutory requirement specifying State payment of 'reasonable-cost-related' reimbursement to skilled nursing and intermediate care facilities." In explaining the rationale for this proposal, the Committee print stated that:

"States have complained that present Federal statutory and regulatory requirements with respect to medicaid patients in long-term care facilities unduly constrain their administrative and fiscal discretion."

The Committee print suggested the following as a possible alternative:

"Delete the present statutory requirement and allow States the discretion of determining appropriate levels of nursing home and intermediate care reimbursement."

UTH ✓ Savings from this action were estimated at \$51 million during fiscal year 1980, increasing to \$74 million for fiscal year 1984, based on the assumption that, given the freedom to do so, States would reduce nursing home payment rates.

✓ The savings estimate was prepared by the Congressional Budget Office (CBO); it was based on an estimate that the maximum possible savings would be 1 percent of nursing home payments. We understand that CBO has revised its estimate based on conversations with States which account for about two-thirds of all Medicaid nursing home payments. CBO now estimates that there will be no net change in expenditures if the proposed amendment is enacted. Some of the States contacted by CBO estimated small savings, while others estimated increased costs.

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1/"Proposals for Medicare-Medicaid Reform and Overall Hospital Revenues Limitation," prepared by the Staff of the Senate Committee on Finance, Apr. 1979 (Committee Print 96-10).

CONSUMER AND SENIOR  
CITIZEN GROUPS' FEARS

You stated that consumer and senior citizen groups had expressed concerns to the Committee about potential adverse effects from the proposed amendment. You summarized these concerns into three areas and asked for our opinion on the accuracy of them.

Does the proposed amendment  
effectively remove HEW from  
the Medicaid nursing home  
reimbursement system?

Consumer and senior citizen groups are concerned that the proposed amendment effectively removes HEW and, thereby, the Federal Government, from its obligation to verify and approve State cost-finding methods used to develop nursing home payment rates.

The proposed amendment requires the State in its Medicaid plan to "assure" that its reimbursement methods and standards are "reasonable and adequate." However, it appears that HEW would not have authority to disapprove State nursing home payment methods and standards as long as the State includes in its Medicaid plan a statement that it finds and assures that its methods and standards are reasonable and adequate to meet the two conditions. In this regard, current law specifically requires HEW to approve and verify State cost-finding methods for nursing homes. Because the proposed amendment deletes the language imposing this requirement, enactment would appear to effectively remove HEW from the rate setting process.

We believe that, because at least half of the Medicaid money spent on nursing home care is Federal funds, HEW, as the responsible Federal agency, should maintain some control of nursing home payment rates.

Are cost reporting  
requirements nullified?

Consumer and senior citizen groups are concerned that, because of the flexibility permitted under the proposed amendment, States could pay nursing homes a flat rate per patient

day. The groups fear this would permit payments to homes without requiring them to submit detailed cost reports, which are a primary basis for obtaining convictions of nursing home operators who commit fraud. The groups believe convictions would be impossible without cost reporting requirements.

We agree that detailed cost reports have been very important in prosecuting nursing homes that commit fraud. We also believe that cost reports and audits of them are equally important for assuring accurate reimbursements. Section 1121 of the Social Security Act requires HEW to establish uniform cost reporting systems for SNFs and ICFs participating in Medicaid, but does not require States to use cost reports for reimbursement purposes. This requirement is imposed under section 1902(a)(13)(E) and it would be nullified by the proposed amendment.

In our opinion, a State should be required to include, in its reimbursement methods and standards, requirements for filing cost reports. Without cost reports the State would not know what actual costs are to determine payment rates under any reimbursement methodology--including a flat rate system--and therefore could not reasonably attain the assurance required by the proposed amendment that nursing homes rates reflect the costs "incurred by efficiently and economically operated facilities."

Will States have to demonstrate  
that their rates are adequate?

Consumer and senior citizen groups are concerned that States will have difficulty demonstrating that their nursing home payment rates are adequate. The groups believe that the States will not be able to do so and that, as a result, payment rates will unnecessarily escalate.

The language of the proposed amendment requires a State to find and assure that its methods and standards for nursing home reimbursement result in rates which

--meet the costs incurred by efficiently and economically operated homes which provide care and services in conformity with State and Federal laws and regulations and

--assure the reasonable availability of nursing home services so that Medicaid recipients can receive such services at least to the extent they are available to the public.

As indicated your letter, the nursing home industry in the past has shown its willingness to initiate suits regarding nursing home rate setting methodologies which the industry believed did not adequately reimburse homes. In Alabama Nursing Home Association, et al. v. Califano et al., U.S. District Court, Middle District of Alabama, Northern Division, Civ. Act. No. 77-52-N, Feb. 23, 1979, however, the Court held that it was the nursing home association which had to, but did not, demonstrate "that economically and efficiently operated nursing homes are not being reimbursed their full actual allowable costs." The Court further held that "there is a judicial presumption of the validity of administrative action." We cannot predict what presumptions the courts might apply in any future litigation of the proposed amendment and, therefore, cannot say who will be called upon to demonstrate the adequacy or inadequacy of payment rates. Of greater significance, we believe, is the fact that the proposed amendment makes a substantial change to present requirements that address the availability of nursing home services. Requirements of current regulations relate to States enlisting sufficient numbers of providers to participate in Medicaid, in order to ensure availability. The requirements of the proposed amendment would focus not on the extent of provider participation but on the adequacy of payment rates to assure that services are reasonably available in a quantitatively measurable degree. The proposed amendment requires a finding that the rates assure "the reasonable availability of these services so that the eligible person can receive such services included in the plan at least to the extent such services are available to the general population."

Based on our experience we believe that nursing homes in some States may be able to demonstrate that their current payment rates do not assure that services are available to the degree contemplated by the proposed amendment. In a report on Ohio's Medicaid program, 1/ we pointed out

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1/"Ohio's Medicaid Program: Problems Identified Can Have National Importance," HRD-78-98A, Oct. 23, 1978.

that SNF services were not readily available in Ohio to Medicaid recipients because of the State's relatively low reimbursement rate for SNF services. We also reported that this affected the availability of SNF services to Medicare beneficiaries because SNFs feared Medicare patients would become Medicaid patients after exhausting their Medicare benefits of 100 days of SNF care.

A survey of Ohio hospitals, which 123 of 218 hospitals responded to, showed that on the day of the survey 223 Medicaid patients and 944 Medicare patients were awaiting transfer to SNFs. These data indicate that at least \$70 million per year in Medicare and Medicaid funds are being spent on hospitalizing patients who could be adequately served by SNFs. We also noted in the report that:

"Many other States also limit reimbursements to SNFs at relatively low upper limits. For example, California limits SNF reimbursements to \$27.77 per-patient-day and Florida limits them to \$630 per-patient-month. While we do not know if SNF reimbursement limits in other States have had an impact on the availability of Medicaid and Medicare SNF services as they have in Ohio, we suspect they have."

Since that report was issued, information reported by the New York Statewide Professional Standards Review Council, Inc., shows that at least \$216 million is being spent each year on hospitalized Medicare and Medicaid patients who could be adequately served at a lower level of care. The Professional Standards Review Organizations (PSROs) operating in New York surveyed 285 hospitals and found that, on the day of the survey, 3,961 patients were awaiting placement in lower level of care facilities. On the average, these patients had been waiting 36 days for appropriate placement.

The Council said about 10 percent of Medicare and Medicaid patients were awaiting placement, while only 1 percent of privately insured patients were doing so. The Council attributed this to the higher level of reimbursement paid to lower level of care facilities by private patients than is allowed by Medicare and Medicaid.

Also, for quarters beginning after December 1978, all PSROs were instructed to report to HEW all days for which they approved hospital stays because a bed in a SNF or an ICF was not available. As of October 5, 1979, 139 PSROs had submitted to HEW these data for the January-March 1979 quarter and

--over 15.9 million Medicare and Medicaid inpatient hospital days had been approved for payment,

--212,265 of these days were approved for payment because SNF beds were not available, and

--39,584 days were approved for payment because ICF beds were not available.

These data further indicate that a problem exists regarding the availability of nursing home services to Medicaid and Medicare patients.

In our report on Ohio's Medicaid program, we pointed out the importance of having an adequate utilization review program over nursing home care before increasing payment rates to assure availability of care:

"If Ohio or any other State is to pay full reasonable costs to a SNF, it is of paramount importance that they have an effective utilization review system for SNF services. This is so because if patients who only require an intermediate level of care are allowed to be placed in a SNF, the cost of care for such patients will be increased tremendously. For example, the cost for the care of 10,000 intermediate care patients misclassified as skilled care patients could cause an overpayment of \$73 million per year if the skilled and intermediate rates were \$45 and \$25 per day, respectively. We believe that present utilization review for long-term care facilities in Ohio is inadequate."

We recommended that HEW assist Ohio, and any other States with similar problems, to improve its reimbursement system

for skilled nursing services in order to increase the availability of these services, after assuring that an adequate utilization review program for SNFs was in place.

We are also concerned about the adequacy of utilization review programs in other States. Although we have not recently reviewed this area in depth, except for Ohio's program, our prior reports on utilization review programs have disclosed problems. Also, the Congress expressed concern about utilization review by enacting and amending the PSRO program and by enacting a penalty provision for States that fail to meet several basic utilization review requirements.

WHAT DOES GAO EXPECT TO BE  
THE RESULTS OF ENACTING THE  
PROPOSED AMENDMENT?

You requested our opinion on the effect the proposed amendment is likely to have. We believe that unless payment rates are increased, at least some States would have a difficult time assuring that rates for nursing home services are reasonable and adequate to assure that services are as available to Medicaid recipients as to the public. Therefore, we expect that enactment of the proposed amendment would result in increased nursing home reimbursements.

GAO VIEW ON AVAILABILITY

We believe that the availability of nursing home services to Medicaid recipients should be increased so that hospitalized patients who could be adequately served by homes could be transferred to them. This would save millions of dollars. However, increasing payment rates to increase availability without first assuring that adequate utilization review programs are in place could result in substantial unnecessary expenditures. As discussed above, we are concerned about the adequacy of the utilization review programs.

RECOMMENDATIONS TO THE CONGRESS

You asked that we suggest substitute language that would assure nursing home operators a fair return and offer the State and Federal Governments the necessary control and accountability. Because of our concerns about the availability of services and the adequacy of utilization review programs,



we recommend that the Congress not amend the nursing home reimbursement provision until HEW assures the Congress that adequate utilization controls are in place. At that time, we would support a provision that would result in decreased use of inpatient hospital care by increasing the availability of nursing home services.

If the Congress were to amend the Medicaid nursing home reimbursement provision at the present time, the following changes to the language of the proposed amendment could be used to overcome two of the concerns expressed in your letter--possible removal of HEW from the rate setting process and possible nullification of cost reporting requirements--and our concerns over the availability of nursing home services and the States ability to assure availability. Our suggested changes to the proposed amendment are underlined.

- (a) Section 1902(a)(13)(E) is amended to read as follows: "(E)(i) effective January 1, 1980, for payment of the skilled nursing facility and intermediate care facility services provided under the plan through the use of rates determined in accordance with methods and standards developed by the State which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate (I) to meet the cost which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws and regulations, and (II) to assure the reasonable availability of the services so that the eligible persons can receive such services included in the plan at least to the extent such services are available to the general population;
- (ii) State assurances to the Secretary shall include assurances that (I) the methods and standards require filing of cost reports and audits of such reports and (II) adequate utilization review procedures exist for determining the

appropriate level of care for individuals  
receiving assistance under this title;  
and."

(b) Until , a State which cannot make  
the assurances required by section (a) can  
continue to use the methods and standards  
previously approved by the Secretary.

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As agreed with your office, we will not release this report to others for 14 days. At that time, we will send copies to the Secretary of HEW and other interested parties.

Sincerely yours,

*Harry R. Jan Cline*

Acting Comptroller General  
of the United States